

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2604 OF 2007

The Supervisor & anr. Municipal Corpn. of Gr. Mumbai	... Petitioners
V/s	
Smt. Gangubai Sitaram Kunchikurve	... Respondent

Mr.A.J.Bhor for the petitioners.

Mr.M.S.Patankar for Resp.No.1.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 31ST OCTOBER, 2007.

P.C.:

1. The petitioners challenge the orders of the Controlling Authority and of the Appellate Authority under the Payment of Gratuity Act, 1972.

2. The husband of the respondent herein, Sitaram Kunchikurve, was employed with the petitioners as a Scavenger in the Solid Waste Management Department, M/East Ward since 3.7.1971. He died while in service on 18.4.1997. Since the respondent was not paid the gratuity which was due and payable to Sitaram after his death, the respondent filed an application under the Payment of Gratuity Act. This application was allowed

by order dated 27.6.2005. The petitioners were directed to pay the respondent an amount of Rs.51,345/- alongwith interest at the rate of 12% p.a. from 18.4.1997 till the payment.

3. Aggrieved by this order, the petitioners preferred an appeal before the Appellate Authority constituted under the Payment of Gratuity Act. This appeal was dismissed.

4. The main contention of the petitioners' advocate is that the petitioners could not pay the gratuity to the respondent since she was not the nominee in the service record of Sitaram, maintained with the petitioners. Instead the name of one Marubai who also claims to be Sitaram's wife was shown as the nominee. He submits that, therefore, the petitioners are not liable to pay interest from 18.4.1997 on the delayed payment of gratuity. He further submits that in any event the interest at the rate of 12% p.a. is not contemplated by the Payment of Gratuity Act. According to the learned advocate, judgments indicate that only 9% p.a. simple interest is payable on the unpaid gratuity.

5. Under Section 7(3A), the Controlling Authority is empowered to direct the payment of gratuity alongwith

simple interest at "such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits." It appears that a notification was issued by the Government in 1987 directing that the long term deposits would earn interest of 10% per annum. This notification, according to the learned advocates, is applicable to the present case. Therefore, the petitioners are liable to pay interest at the rate of 10% per annum and not 12% per annum as ordered in the impugned orders.

6. The respondent has been employed by the petitioners after the death of Sitaram. The petitioners may recover the additional interest paid to her from her salary by equated monthly instalments.

7. Petition disposed of accordingly.

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